
EVALUATOR MANUAL TRANSMITTAL SHEET

<u>Distribution:</u> ____ All Child Care Evaluator Manual Holders <u> X </u> All Residential Care Evaluator Manual Holders ____ All Evaluator Manual Holders	<u>Transmittal No.</u> 04APX-5
	<u>Date Issued</u> April 2004

Subject:

Residential Care Facilities for the Chronically Ill (RCF-CI) Act 2004

Reason For Change:

To incorporate into the Evaluator Manual all additions and amendments to Health and Safety Code that were made during the 2003 Legislative Session.

Filing Instructions:

- X REMOVE – 2003 RCF-CI Act from Appendix B
- X INSERT – 2004 RCF-CI Act (attached) into Appendix B
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Approved:

Original signed by C. McCoy

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CATHLEEN A. McCOY, Chief
Technical Assistance and Policy Branch
Community Care Licensing Division

Date

Contact Person: Stephanie Davis

Phone Number: 916-322-4887

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HEALTH AND SAFETY CODE
DIVISION 2. Licensing Provisions
CHAPTER 3.01. Residential Care Facilities for Persons with Chronic Life-Threatening Illness

§ 1568.01. Definitions

For purposes of this chapter, the following definitions shall apply:

- (a) "Activities of daily living" means housework, meals, laundry, taking medication, money management, appropriate transportation, correspondence, telephoning, dressing, feeding, toileting, bathing, grooming, mobility, and related tasks.
- (b) "Care and supervision" means ongoing assistance with activities of daily living without which a resident's physical health, mental health, safety, or welfare would be endangered.
- (c) "Chronic, life-threatening illness" means HIV disease or AIDS.
- (d) "Department" means the State Department of Social Services.
- (e) "Director" means the Director of Social Services.
- (f) "Family dwelling" includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.
- (g) "Family unit" means at least one parent or guardian and one or more of that parent or guardian's children. For purposes of this chapter, each family unit shall include at least one adult with HIV disease or AIDS, or at least one child with HIV or AIDS, or both.
- (h) "Fund" means the Residential Care Facilities for Persons with Chronic Life-Threatening Illness Fund created by subdivision (c) of Section 1568.05.
- (i) "Placement agency" means any state agency, county agency, or private agency which receives public funds, in part, to identify housing options for persons with chronic, life-threatening illness and refers these persons to housing.
- (j) "Residential care facility" means a residential care facility for persons with chronic, life-threatening illness who are 18 years of age or older or are emancipated minors, and for family units.
- (k) "Six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

§ 1568.02. Separate category of licensing; basic services; licensee demonstration of ability to provide services; number of residents; additional personnel

- (a) The department shall license residential care facilities for persons with chronic, life-threatening illness under a separate category.
- (b) The licensee of every facility required to be licensed pursuant to this chapter shall provide the following basic services for each resident:
 - (1) Room and board. No more than two residents shall share a bedroom, except that the director, in his or her discretion, may waive this limitation.
 - (2) Access to adequate common areas, including recreation areas and shared kitchen space with adequate refrigerator space for the storage of medications.

- (3) Consultation with a nutritionist, including consultation on cultural dietary needs.
- (4) Personal care services, as needed, including, but not limited to, activities of daily living. A facility may have a written agreement with another agency to provide personal care services, except that the facility shall be responsible for meeting the personal care needs of each resident.
- (5) Access to case management for social services. A facility may have a written agreement with another agency to provide case management.
- (6) Development, implementation, and monitoring of an individual services plan. All health services components of the plan shall be developed and monitored in coordination with the home health agency and shall reflect the elements of the resident's plan of treatment developed by the home health agency.
- (7) Intake and discharge procedures, including referral to outplacement resources.
- (8) Access to psychosocial support services.
- (9) Access to community-based and county services system.
- (10) Access to a social and emotional support network of the resident's own choosing, within the context of reasonable visitation rules established by the facility.
- (11) Access to intermittent home health care services in accordance with paragraph (1) of subdivision (c).
- (12) Access to substance abuse services in accordance with paragraph (3) of subdivision (c).
- (13) Adequate securable storage space for personal items.

(c) The licensee of every facility required to be licensed pursuant to this chapter shall demonstrate, at the time of application, all of the following:

- (1) Written agreement with a licensed home health agency. Resident information may be shared between the home health agency and the residential care facility for persons with chronic, life-threatening illness relative to the resident's medical condition and the care and treatment provided to the resident by the home health agency including, but not limited to, medical information, as defined by the Confidentiality of Medical Information Act, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code. Any regulations, policies, or procedures related to sharing resident information and development of protocols, established by the department pursuant to this section, shall be developed in consultation with the State Department of Health Services and persons representing home health agencies and residential care facilities for persons with chronic, life-threatening illness.
- (2) Written agreement with a psychosocial services agency, unless the services are provided by the facility's professional staff.
- (3) Written agreement with a substance abuse agency, unless the services are provided by the facility's professional staff.
- (4) Ability to provide linguistic services for residents who do not speak English.
- (5) Ability to provide culturally appropriate services.
- (6) Ability to reasonably accommodate residents with physical disabilities, including, but not limited to, residents with motor impairments, physical access to areas of the facility utilized by residents, and access to interpreters for hearing-impaired residents.
- (7) Written nondiscrimination policy which shall be posted in a conspicuous place in the facility.
- (8) Written policy on drug and alcohol use, including, but not limited to, a prohibition on the use of illegal substances.

(d) Any facility licensed pursuant to this chapter which intends to serve a specific population, such as women, family units, minority and ethnic populations, or homosexual men

or women, shall demonstrate, at the time of application, the ability and resources to provide services that are appropriate to the targeted population.

(e) No facility licensed pursuant to this chapter shall house more than 25 residents, except that the director may authorize a facility to house up to 50 residents.

(f) If the administrator is responsible for more than two facilities, the facility manager shall meet the qualifications of both the administrator and the facility manager, as described in Sections 87864 and 87864.1 of Title 22 of the California Code of Regulations.

(g) Each licensee shall employ additional personnel as necessary to meet the needs of the residents and comply with the requirements of this chapter and the regulations adopted by the department pursuant to this chapter. On-call personnel shall be able to be on the facility premises within 30 minutes of the receipt of a telephone call.

§ 1568.021. Surety bond for handling money of residents; grounds for license revocation; variances

(a) If the applicant for a license for a residential care facility handles or will handle any money of a resident of the facility, the applicant or licensee shall file or have on file with the department a bond issued by a surety company admitted to do business in this state in a sum to be fixed by the department based upon the magnitude of the operations of the applicant or licensee, but which sum shall not be less than one thousand dollars (\$ 1,000), running to the State of California and conditioned upon his or her faithful and honest handling of the money of residents of the facility.

(b) The failure of any licensee under this chapter to maintain on file with the department a bond in the amount prescribed by the department or the embezzlement by a licensee of trust funds of a resident of the facility shall constitute cause for the revocation of the license.

(c) This section shall not apply if the licensee handles moneys of residents of the facility in amounts less than fifty dollars (\$ 50) per person and less than five hundred dollars (\$ 500) for all persons in any month.

(d) The director may grant a partial or total variance from the requirements of this section if the director finds that compliance with them is so onerous that a residential care facility will cease to operate, and if the director also finds that money of the residents received or cared for in the facility has been, or will be, deposited in a bank in this state, in a trust company authorized to transact a trust business in this state, or in a savings and loan association in this state, upon condition that the money may not be withdrawn except on authorization of the person or a representative who is legally authorized to make financial decisions on behalf of the person.

§ 1568.03. License requirements; levels of care; application of chapters; multiple licenses; enjoining violations

(a) No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in this state without first obtaining and maintaining a valid license therefor, as provided in this chapter.

(b) A facility may accept or retain residents requiring varying levels of care. However, a facility shall not accept or retain residents who require a higher level of care than the facility is authorized to provide. Persons who require 24-hour skilled nursing intervention shall not be appropriate for a residential care facility.

(c) This chapter shall not apply to the following:

(1) Any health facility, as defined in Section 1250.

(2) Any clinic, as defined in Section 1200.

(3) Any arrangement for the receiving and care of persons with chronic, life-threatening illness by a relative, guardian or conservator, significant other, or close friend; or any arrangement for the receiving and care of persons with chronic, life-threatening illness from only one family as respite for the relative, guardian or conservator, significant other, or close friend, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department.

(4) (A) Any house, institution, hotel, foster home, shared housing project, or other similar facility that is limited to providing any of the following: housing, meals, transportation, housekeeping, recreational and social activities, the enforcement of house rules, counseling on activities of daily living, and service referrals, as long as both of the following conditions are met:

(i) After any referral, all residents thereof independently obtain care and supervision and medical services without the assistance of the facility or of any person or entity with an organizational or financial connection with that facility.

(ii) No resident thereof has an unmet need for care and supervision or protective supervision. A memorandum of understanding between the facility and any service agency to which it refers residents does not necessarily itself constitute an agreement for care and supervision of the resident.

(B) In determining the applicability of this paragraph, the department shall determine the residents' need for care and supervision, if any, and shall identify the persons or entities providing or assisting in the provision of care and supervision. This paragraph shall apply only if the department determines that the care and supervision needs of all residents are being independently met.

(5) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(6) Any similar facility determined by the director.

(d) A holder of a residential care facility license may hold or obtain an additional license or a child day care facility license, as long as the services required by each license are provided at separate locations or distinctly separate sections of the building.

(e) The director may bring an action to enjoin the violation or threatened violation of this section in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The court shall, if it finds the allegations to be true, issue its order enjoining continuance of the violation.

§ 1568.04. Application for issuance of license

Any person desiring issuance of a license for a residential care facility under this chapter shall file with the department, pursuant to regulations adopted by the department, an application. The application shall be provided on a form furnished by the department, and shall include, but not be limited to, all of the following:

(a) Evidence satisfactory to the department of all of the following:

(1) The ability of the applicant to comply with this chapter and of rules and regulations adopted pursuant to this chapter by the department.

(2) The applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

(3) Following the department's adoption of regulations specifying the levels of care to be provided under this chapter, the applicant's ability to meet regulatory requirements for the level of care the facility intends to provide.

(4) Compliance or ability to comply with Section 1568.02.

(b) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any residential care facility or in any clinic or facility licensed pursuant to Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), or Chapter 3 (commencing with Section 1500).

(c) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (b).

(d) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

(e) A signed statement that the person desiring issuance of a license has read this chapter and the regulations adopted pursuant to this chapter and understands the statute and regulations applicable to a residential care facility.

§ 1568.041. Regional or district office license application and licensee monitoring; designation of personnel

(a) The department shall designate at least one person in each region to be responsible for all activities pertaining to license application as well as prescribed monitoring of licensees. In those regions which have a concentration of licensees, the department shall make every effort to identify at least one person in each district office whose sole responsibility will be for facilities licensed pursuant to this chapter.

(b) The department shall ensure that those personnel identified in subdivision (a) receive periodic training regarding the most recent developments in the HIV epidemic and care and supervision of people with HIV disease.

§ 1568.042. Corporate applicants; directors or officers; related facilities; issuance or revocation of license

(a) A corporation that applies for licensure with the department shall list the facilities that any member of the board of directors, the executive director, or an officer has been licensed to operate, been employed in, or served as a member of the board of directors, the executive director, or an officer.

(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, an executive director, or an officer who

is not eligible for licensure pursuant to subdivision (f) of Section 1568.065 and Section 1568.093.

(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, an executive director, or an officer who is not eligible for licensure pursuant to subdivision (f) of Section 1568.065 and Section 1568.093.

(d) Prior to instituting an administrative action pursuant to either subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee, and shall give the applicant or licensee 15 days to remove the person from that position.

§ 1568.05. Fees; assessment; residential care facilities for persons with chronic, life-threatening illness fund; grounds for denial or revocation of license

(a) An annual fee adjusted by capacity shall be charged by the department for a license to operate a residential care facility or for processing any application therefor and, thereafter, shall be charged on each anniversary of the effective date of the license. The fee shall be assessed as follows:

Capacity	Annual Fee
1-6	\$ <u>250</u> plus \$ <u>10</u> per bed
7-15	\$ <u>313</u> plus \$ <u>10</u> per bed
16-25	\$ <u>375</u> plus \$ <u>10</u> per bed
26-50	\$ <u>438</u> plus \$ <u>10</u> per bed

(b) No local governmental entity shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

(c) All fees collected pursuant to subdivision (a) shall be deposited in the Residential Care Facilities for Persons with Chronic, Life-Threatening Illness Fund, which is hereby created in the State Treasury. Moneys in the fund, upon an appropriation made in the annual Budget Act, shall be available to the department for the purposes specified in subdivision (d).

(d) The fund may be used for the purpose of financing a portion of the license application processing costs. In addition, the fund may be utilized by the department to finance postlicensure inspections pursuant to Section 1568.07, to allow increased monitoring of facilities with a history of noncompliance with this chapter and regulations adopted pursuant to this chapter, and other administrative activities in support of the licensing program administered pursuant to this chapter. The revenues collected in the fund shall be used in addition to any other moneys appropriated for the purposes specified in this subdivision.

(e) Fees established pursuant to this section shall not be effective unless licensing fees are established for all adult residential facilities licensed by the department.

(f) A residential care facility may use a bona fide business check to pay the license fee required under this section.

(g) Failure to pay required license fees, including the finding of insufficient funds to cover bona fide business checks submitted for this purpose, may constitute grounds for denial or revocation of a license.

§ 1568.06. Copy of regulations provided to applicants; orientation

(a) Upon initial application for licensure, residential care facilities shall be provided a printed copy of all applicable regulations for the operation of these facilities by the department,

without charge. The department shall provide all licensees with copies of proposed changes in regulations applicable to residential care facilities prior to public hearings on those proposed changes, and copies of all adopted changes in regulations applicable to residential care facilities immediately upon their adoption.

(b) As a requirement for licensure, an applicant shall attend an orientation given by the department which outlines the applicable rules and regulations and the scope and responsibility for operation of a residential care facility . The orientation shall include information on relevant community services.

§ 1568.061. Forfeiture of license

A license shall be forfeited by operation of law prior to its expiration date when any of the following occurs:

(a) The licensee sells or otherwise transfers the facility or the real property on which the facility is located, except when change of ownership applies to transferring of stock when the facility is owned by a corporation and when the transfer of stock does not constitute a majority change in ownership.

(b) The licensee surrenders the license to the department.

(c) The licensee moves a facility from one location to another. The department shall develop regulations to ensure that a licensee is not charged a full licensing fee and is not required to complete the entire application process when applying for a license for the new location.

(d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The licensee dies. When a licensee dies, the continued operation shall be subject to the requirements of Section 1568.064.

§ 1568.062. Issuance of license; provisional licenses

(a) Upon the filing of the application for issuance of a license and substantial compliance with this chapter and the rules and regulations of the department adopted pursuant to this chapter, the director shall issue to the applicant the license to operate a residential care facility. If the director finds that the applicant is not in compliance with this chapter or the regulations adopted pursuant to this chapter, the director shall deny the applicant a license.

(b) The director may issue provisional licenses to operate residential care facilities for any facility which the director determines is in substantial compliance with this chapter and the rules and regulations adopted pursuant to this chapter, provided that no life safety risks are involved, as determined by the director. In determining whether any life safety risks are involved, the director shall require completion of all applicable fire clearances and criminal record clearances as otherwise required by the department's rules and regulations. A provisional license issued pursuant to this subdivision shall expire six months from the date of issuance, or at an earlier time as the director may determine, and may not be renewed. However, the director may extend the term of a provisional license for an additional six months at the time of application, if it is determined that more than six months will be required to achieve full compliance with licensing standards due to circumstances beyond the control of the applicant, and if all other requirements for a license have been met.

§ 1568.063. Notification of denial of license; hearing

Immediately upon the denial of any application for a license, the department shall notify the applicant in writing. Within 15 days after the department mails the notice of denial, the applicant may present his or her written petition for a hearing to the department. Upon receipt by the department of the petition in proper form, the petition shall be set for hearing.

§ 1568.064. Death of licensee; continuation of operation of facility; provisional license

(a) When a licensee dies, an adult relative who has control of the property may continue operation of the facility if the following conditions are met:

(1) The department receives notification of the death during the next normal workday and is informed of the relative's intent to continue operating the facility as a residential care facility for persons with chronic, life-threatening illnesses.

(2) The relative files application, within five days of the date of death, shows evidence satisfactory to the department that he or she has the ability to operate the facility, submits his or her fingerprint card, and provides evidence of the licensee's death.

(b) The department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 1568.062. A provisional license shall be granted only if the department is satisfied that the conditions specified in subdivision (a) have been met and that the health and safety of the residents of the facility will not be jeopardized.

(c) If the relative complies with subdivision (a), he or she shall not be considered to be operating an unlicensed facility while the department decides whether to grant the provisional license.

§ 1568.065. Suspension, revocation or denial of license; review of application; conduct or proceedings; continuance

(a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all those powers granted by the provisions. In the event of conflict between this chapter and those provisions of the Government Code, this chapter shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1568.082, the hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of any of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of that person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(d) In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

(e) (1) The withdrawal of an application for a license or a special permit after it has been filed with the department shall not deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any ground provided by law.

(2) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any ground provided by law.

(f) (1) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.3 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the

department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(4) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) and the application was denied within the last year, the department shall cease further review of the application as follows:

(A) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(C) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence.

(5) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(A) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(C) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(6) The cessation of review shall not constitute a denial of the application for purposes of Section 1568.062 or any other law.

§ 1568.0651. Hearing; testimony of child or similarly vulnerable witness outside the presence respondent; conditions; closed circuit television; clearing of hearing room

(a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents

if all of the following conditions exist:

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

(b) If the testimony of the witness is taken outside of the presence of the respondent or respondents, the department shall provide for the use of one-way closed-circuit television so the respondent or respondents can observe the testimony of the witness. Nothing in this section shall limit a respondent's right of cross-examination.

(c) The administrative law judge conducting a hearing under this section may clear the hearing room of any persons who are not a party to the action in order to protect any witness from intimidation or other harm, taking into account the rights of all persons.

§ 1568.0652. Witnesses under age of 12; hearsay testimony

(a) (1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

§ 1568.067. Sale or exchange of licenses; advertising to contain license number

(a) No license issued pursuant to this chapter shall have any property value for sale or exchange purposes and no person, including any owner, agent, or broker, shall sell or exchange any license for any commercial purpose.

(b) (1) Each residential care facility licensed under this chapter shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients or residents.

(2) Advertisements, publications, or announcements subject to the requirements of paragraph (1) shall include, but not be limited to, those contained in a newspaper or magazine, consumer report, announcement of intent to commence business, telephone directory yellow pages, professional or service directory, or radio or television commercial.

§ 1568.068. Sale of licensed facility resulting in issuance of new license: conditions

(a) Notwithstanding Section 1568.061, in the event of a sale of a licensed residential care for persons with chronic, life-threatening illness facility where the sale will result in a new license being issued, the sale and transfer of property and business shall be subject to both of the following:

(1) The licensee shall provide written notice to the department and to each resident or his or her legal representative of the licensee's intent to sell the facility at least 60 days prior to the transfer of property or business, or at the time that a bona fide offer is made, whichever period is longer.

(2) The licensee shall, prior to entering into an admission agreement, inform all residents, or their legal representatives, admitted to the facility after notification to the department, of the licensee's intent to sell the property or business.

(b) Except as provided in subdivision (e), the property and business shall not be transferred until the buyer qualifies for a license or provisional license pursuant to this chapter.

(1) The seller shall notify, in writing, a prospective buyer of the necessity to obtain a license, as required by this chapter, if the buyer's intent is to continue operating the facility as a residential care facility for the chronically ill. The seller shall send a copy of this written notice to the licensing agency.

(2) The prospective buyer shall submit an application for a license, as specified in Section 1568.04, within five days of the acceptance of the offer by the seller.

(c) No transfer of the property or business shall be permitted until 60 days have elapsed from the date when notice has been provided to the department pursuant to paragraph (1) of subdivision (a).

(d) The department shall give priority to applications for licensure that are submitted pursuant to this section in order to ensure timely transfer of the property and business. The department shall make a decision within 60 days after a complete application is submitted on whether to issue a license pursuant to Section 1568.04.

(e) If the parties involved in the transfer of the property and business fully comply with this section, then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed facility while the department makes a final determination on the application for licensure.

§ 1568.07. Inspection and evaluation of facilities; level of care assessment; notice of deficiencies; reports; discrimination or retaliation for instituting or participating in inspection; informing of impending or proposed inspection

(a) (1) Within 90 days of initial licensure, the department shall inspect the facility to evaluate compliance with rules and regulations and to assess the facility's continuing ability to meet regulatory requirements.

(2) The department may take appropriate remedial action as provided for in this chapter.

(b) (1) Every licensed residential care facility shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted at least annually and as often as necessary to ensure the quality of care being provided.

(2) During each licensing inspection the department shall determine if the facility meets

regulatory standards, including, but not limited to, providing residents with the appropriate level of care based on the facility's license, providing adequate staffing and services, updated resident records and assessments, and compliance with basic health and safety standards.

(3) If the department determines that a resident requires a higher level of care than the facility is authorized to provide, the department may initiate a professional level of care assessment by an assessor approved by the department. An assessment shall be conducted in consultation with the resident, the resident's physician and surgeon, and the resident's case manager, and shall reflect the desires of the resident, the resident's physician and surgeon, and the resident's case manager. The assessment also shall recognize that certain illnesses are episodic in nature and that the resident's need for a higher level of care may be temporary.

(4) The department shall notify the residential care facility in writing of all deficiencies in its compliance with this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(5) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located.

(c) Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this chapter.

(d) No licensee shall discriminate or retaliate in any manner against any person receiving the services of the facility of the licensee, or against any employee of the facility, on the basis, or for the reason, that a person or employee or any other person has initiated or participated in an inspection pursuant to Section 1568.071.

(e) Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, agent, or resident of a residential care facility, of an impending or proposed inspection or evaluation of that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$ 1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

§ 1568.071. Requests for inspections; complaint; review

(a) Any person may request an inspection of any residential care facility in accordance with this chapter by transmitting to the department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a residential care facility, the department shall make a preliminary review

and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection within 10 days after receiving the complaint except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

(d) Upon receipt of a complaint alleging denial of a statutory right of access to a residential facility, the department shall review the complaint. The complainant shall be notified promptly of the department's proposed course of action.

§ 1568.072. Rules, regulations, and standards

(a) The department shall adopt, amend, and repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any reasonable rules, regulations, and standards as may be necessary or proper to carry out the purposes and intent of this chapter and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with state law.

(b) Regulations for a license shall prescribe standards of safety and sanitation, for the physical plant, as well as for the basic care and supervision, personal care, and services to be provided by a facility.

(c) Regulations shall specify the application and licensing process, the range of services, alternative methods for providing those services, the appraisal and assessment process, and facility staffing and training requirements.

(d) Regulations shall allow for the development of new and innovative community programs.

§ 1568.073. Order to remove resident; notice to resident and licensee; review and determination of relocation plan

(a) (1) The department may order the licensee to remove a resident who has a health condition which cannot be cared for within the limits of the license or requires inpatient care in a health facility as determined by the department pursuant to Section 1568.07.

(2) When the department determines that the resident's mental or physical condition requires immediate transfer from the facility in order to protect the health and safety of the resident, the department may order the licensee to remove the resident after the department consults with a physician or other medical professional about the transfer and ways in which transfer trauma can be minimized.

(b) (1) When the department determines that a resident has a health condition which cannot be cared for within the limits of the license or requires inpatient care in a health facility, the department shall give notice to the resident, his or her legal representative when appropriate, his or her physician when applicable, his or her case manager when applicable, and the licensee. The notice shall specify a deadline for submitting a written plan for relocation and inform the resident of his or her right for a review and determination. The resident, or his or her legal representative, shall have three working days to inform the licensee of the request for review. The licensee shall forward the request to the department within two working days of receipt. Failure or refusal by the licensee to submit the request to the department may subject the licensee to the civil penalties as specified in Section 1568.0822. The department shall not refuse to consider the request if the licensee fails or refuses to submit the request to the

department.

(2) The review and determination shall be completed within 30 days from the date that the resident was initially informed of the need to relocate. If the determination is made that the resident must relocate, the notice shall include a plan for transfer including ways to minimize transfer trauma for the resident.

(3) The department may require the licensee to prepare and submit to the department a written plan for relocation, to comply with the terms and conditions of the approved plan, and to provide other information as necessary for the enforcement of this section.

(c) The provisions allowing for a resident's right to a review prior to transfer as provided in subdivision (b) neither negates the department's authority and responsibility to require an immediate transfer according to paragraph (2) of subdivision (a) when the department finds and provides evidence that the resident must be relocated in order to protect the health and safety of the resident, nor implies any right to a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code.

(d) The department shall specify by regulation the process for making relocation decisions and for appealing and reviewing those decisions pursuant to this section.

§1568.075. Security window installation

On and after January 1, 1999, no security window bars may be installed or maintained on any residential care facility unless the security window bars meet current state and local requirements, as applicable, for security window bars and safety release devices.

§ 1568.08. Records

Each facility required to be licensed under this chapter shall keep a current record of all of the following:

(a) Residents in the facility, including each resident's name and ambulatory status.

(b) The name and telephone number of each resident's physician and surgeon.

(c) The name, address, and telephone number of any person or agency responsible for the care of a resident.

(d) Updated resident file records, including, but not limited to, the current physician and surgeon report, residential appraisal, level of services required and documentation of any health related services provided to residents.

The facility shall respect the privacy and confidentiality of this information.

§ 1568.081. Placement agencies; duties of placement and reporting; misdemeanors; investigations

(a) A placement agency shall place individuals only in licensed residential care facilities or facilities which are exempt from licensure under subdivision (c) of Section 1568.03.

(b) No employee of a placement agency shall place, refer, or recommend placement of a person in a facility operating without a license, unless the facility is exempt from licensure under subdivision (c) of Section 1568.03. Violation of this subdivision is a misdemeanor.

(c) Any employee of a placement agency who knows, or reasonably suspects that a facility, which is not exempt from licensure under this chapter, is operating without a license shall report the name and address of the facility to the department. Failure to report as required by this subdivision is a misdemeanor.

(d) The department shall investigate any report filed under subdivision (c). If the

department has probable cause to believe that the facility which is the subject of the report is operating without a license, the department shall investigate the facility within 10 days after receipt of the report.

(e) A placement agency shall notify the department of any known or suspected incidents which would jeopardize the health or safety of residents in a residential care facility. Reportable incidents include, but are not limited to, all of the following:

- (1) Incidents of physical abuse.
- (2) Any violation of personal rights.
- (3) Any situation in which a facility is unclean, unsafe, unsanitary, or in poor condition.
- (4) Any situation in which a facility has insufficient personnel or incompetent personnel on duty.
- (5) Any situation in which residents experience mental or verbal abuse.
- (6) Any situation in which a facility is suspected of accepting or retaining residents who require a higher level of care than the facility is authorized to provide.

§ 1568.082. Suspension or revocation of licenses; grounds; temporary suspension prior to hearing; removal and relocation of patient requiring care beyond terms of license or special permit

(a) The department may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

- (1) Violation by the licensee of this chapter or of the rules and regulations adopted pursuant to this chapter.
- (2) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted pursuant to this chapter.
- (3) Conduct which is inimical to the health, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.
- (4) The provision of services beyond the level the facility is authorized to provide, or accepting or retaining residents who require services of a higher level than the facility is authorized to provide.
- (5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The director may temporarily suspend any license, prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension, and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible, but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

(c) In any case where the department orders the licensee to remove a resident who has a health condition or health conditions which cannot be cared for within the limits of the license or special permit or requires inpatient care in a health facility licensed pursuant to Chapter 2

(commencing with Section 1250), the licensee shall do all of the following:

- (1) Prepare and submit to the department a written plan for relocation of the client or resident, in a form acceptable to the department.
- (2) Comply with all terms and conditions of the approved relocation plan.
- (3) Provide any other information as may be required by the department for the proper administration and enforcement of this section.

§ 1568.0821. Violations of section 1568.03; civil penalties; appeal

(a) Notwithstanding any other provision of this chapter, any person who violates Section 1568.03 shall be assessed by the department an immediate civil penalty in the amount of one hundred dollars (\$ 100) per resident for each day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be two hundred dollars (\$ 200) per resident for each day of the violation if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the license application is denied and the operator continues to operate the unlicensed facility.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

§ 1568.0822. Civil penalties

(a) In addition to suspension or revocation of a license issued under this chapter, the department may levy a civil penalty in addition to the penalties of suspension or revocation. The department shall adopt regulations setting forth the appeal procedures for deficiencies.

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$ 25) or more than fifty dollars (\$ 50) per day for each violation of this chapter, except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event shall a civil penalty assessment exceed one hundred fifty dollars (\$ 150) per day.

(c) Notwithstanding Section 1568.07, any residential care facility that is cited for repeating the same violation of this chapter within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$ 150) and fifty dollars (\$ 50) for each day the violation continues until the deficiency is corrected.

(d) Any residential care facility that is assessed a civil penalty pursuant to subdivision (c) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (c) shall be assessed an immediate civil penalty of one thousand dollars (\$ 1,000) and one hundred dollars (\$ 100) for each day the violation continues until the deficiency is corrected, provided that the violation is a serious violation.

(e) The department shall adopt regulations implementing this section.

§ 1568.0823. Informing facility of unannounced visit; misdemeanor

(a) Any person who violates this chapter, or who willfully or repeatedly violates any rule or regulation adopted under this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$ 1,000), or by imprisonment in the county jail for a period not to exceed 180 days, or by both fine and imprisonment.

(b) Operation of a residential care facility without a license shall be subject to a summons to appear in court.

(c) Notwithstanding any other provision of this chapter, the district attorney of every county, and the city attorneys in those cities which have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to * * * Section 72193 of the Government Code, shall, upon their own initiative or upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation within his or her county of this chapter.

§ 1568.083. Fire safety regulations; local zoning

(a) The department, State Fire Marshal, or local fire officials shall not make a de facto determination of a resident's ambulatory or nonambulatory status based on a resident's placement in the facility. Interpretation of regulations related to fire safety in residential care facilities shall be made to provide flexibility to allow residents to remain in the least restrictive environment.

(b) This chapter shall not preempt the application of any local zoning requirements to residential care facility, except as provided for in Section 1568.0831.

§ 1568.0831. Local ordinances; residential use of property; family; change of occupancy; contracts, deeds or covenants for transfer of property; rent control

(a) (1) Whether or not unrelated persons are living together, a residential care facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this chapter. In addition, the residents and operators of the facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this chapter.

(2) For the purpose of all local ordinances, a residential care facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential care facility is a business run for profit or differs in any other way from a family dwelling.

(3) This section shall not be construed to prohibit any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential care facility which serves six or fewer persons as long as the restrictions are identical to those applied to other family dwellings of the same type in the same zone.

(4) This section shall not be construed to prohibit the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone and if the ordinance does not distinguish residents of residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

(5) No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential care facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.

(6) Use of a family dwelling for purposes of a residential care facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However,

nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent these sections are applicable to residential care facilities serving six or fewer persons.

(b) No fire inspection clearance or other permit, license clearance, or similar authorization shall be denied to a residential care facility because of a failure to comply with local ordinances from which the facilities are exempt under subdivision (a), provided that the applicant otherwise qualifies for the fire clearance, license, permit, or similar authorization.

(c) For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential care facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

(d) Nothing in this chapter shall authorize the imposition of rent regulations or controls for licensed residential care facilities.

(e) Licensed residential care facilities shall not be subject to controls on rent imposed by any state or local agency or other local government or entity.

§ 1568.0832 Bedridden; defined

(a)(1) For purposes of this section “bedridden” means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

. (2) For purposes of this section, the status of being bedridden shall not include having any illness that persists for 14 days or less.

(3) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) Bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions are met:

(1) The fire safety requirements are met.

(2) Alternative methods of protection are approved.

(c) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivision (a).

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(3) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer clients, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or

resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshall shall issue the written opinion within 45days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

§ 1568.09. Fingerprinting; Criminal Records of Applicants or Persons in Frequent Contact with Residents; Disqualification of Licensee; Termination of Employment; Exemption

It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with residents of residential care facilities for persons with a chronic, life-threatening illness may pose a risk to the residents' health and safety.

Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature, in enacting this section, to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a)(1) Before issuing a license to any person or persons to operate or manage a residential care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated..

(2) The criminal history information shall include the full criminal record if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3)The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or

any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit to the Department of Justice a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by this subdivision. If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to subdivision (a) of Section 1568.82. The department may also suspend the license pending an administrative hearing pursuant to subdivision (b) of Section 1568.82.

(b) In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff of the facility.

(2) Any person, other than a resident, residing in the facility.

(3) Any person who provides resident assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for persons with chronic, life-threatening illness. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for persons with chronic, life-threatening illness pursuant to Section 1568.092.

(4) (A) Any staff person, volunteer, or employee who has contact with the residents.

(B) A volunteer shall be exempt from the requirements of this subdivision if he or she is a relative, significant other, or close friend of a client receiving care in the facility and the volunteer does not provide direct care and supervision of residents. A volunteer who provides direct care and supervision shall be exempt if the volunteer is a resident's spouse, significant other, close friend, or family member and provides direct care and supervision to that resident only at the request of the resident. The department may define in regulations persons similar to those described in this subparagraph who may be exempt from the requirements of this subdivision.

(5) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in that capacity.

(6) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on

the person's capability to exercise substantial influence over the operation of the facility.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a residential care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints, for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (g), prior to the person's employment, residence, or initial presence in the residential care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (g), as required in this section, shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation. The State Department of Social Services may assess civil penalties for continued violations as allowed in Section 1568.0822. The fingerprints shall then be submitted to the State Department of Social Services for processing. The licensee shall maintain and make available for inspection documentation of the individual's clearance or exemption.

(2)(A) Paragraph (1) shall cease to be implemented when the State Department of Social Services adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when those regulations become final.

(B) A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1568.0822.

(3) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and shall notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history record.

(4) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273(g) or 368 of the Penal Code, or a felony, the department shall notify the licensee to act immediately to terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility. The department may subsequently grant an

exemption pursuant to subdivision (f). If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the department, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility, or bar the person from entering the residential care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(5) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(6) Concurrently with notifying the licensee pursuant to paragraph (4), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (4).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of the sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting that person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license as specified in paragraphs (1) and (4) of subdivision (a), or

for employment, residence, or presence in a residential care facility as specified in paragraphs (4), (5), and (6) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1568.092.

(g) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(h) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1568.092, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(i) (1) The Department of Justice shall charge a fee sufficient to cover its cost in providing services to comply with the 14-day requirement contained in subdivision (c) for provision to the department of criminal record information.

(2) Paragraph (1) shall cease to be implemented when the department adopts emergency regulations pursuant to Section 1522.04, and shall become inoperative when permanent regulations are adopted under that section.

(j) Amendments to the provisions of this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

§ 1568.092. Officers, directors and employees of licensed facility; prohibited persons; removal; appeal

(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

(1) Violated, aided, or permitted the violation by any other person of this chapter or of any rules or regulations adopted under this chapter.

(2) Engaged in conduct which is inimical to the health, welfare, or safety of either an individual, in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1568.09.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the action of the department and of the right to an appeal of the excluded person. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the action of the department shall be final.

(c) (1) The department may require the immediate removal of an executive director, a board member, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the director fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1568.082.

(h) (1) (A) In cases where the excluded person appealed the exclusion order and there is a decision and order of the department upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases where the department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of

§ 1568.093 Exclusion of certain persons from licensed facilities

(a) (1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall

exclude the person from, and remove him or her as, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1568.092 or any other law.

(e) The department may determine not to exclude the person from, and remove from being a member of the board of directors, an executive director, or officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances and conditions that either have been corrected or are no longer in existence.